

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

MAY 28 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Implementation of Cable Act Reform
Provisions of the Telecommunications
Act of 1996

)
)
)
)
)

CS Docket No. 96-85

DOCKET FILE COPY ORIGINAL

**JOINT COMMENTS OF
PEOPLE FOR THE AMERICAN WAY AND MEDIA ACCESS PROJECT**

**Jill A. Lesser
PEOPLE FOR THE
AMERICAN WAY
2000 M Street, NW
Washington, DC 20036
202-467-4999**

**Gigi B. Sohn
Andrew J. Schwartzman
Joseph S. Paykel
MEDIA ACCESS PROJECT
2000 M Street, NW
Washington, DC 20036
202-232-4300**

Law Clerk:
James A. Hermes

Counsel for Joint Commenters

May 28, 1996

No. of Copies rec'd 0211
List ABCDE

TABLE OF CONTENTS

INTRODUCTION	1
THE COMMISSION MUST FOLLOW THE ACT'S UNIVERSAL SERVICE PRINCIPLES IN DECIDING HOW TO ENCOURAGE THE DEPLOYMENT OF ADVANCED CABLE SERVICES TO ALL AMERICANS.	3
A. Access to Advanced Telecommunications Is Necessary for All Americans.	3
B. The Commission Must Ensure Broad Institutional Access to Advanced Services Provided By Cable Operators.	5
CONCLUSION	7

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Implementation of Cable Act Reform)	CS Docket No. 96-85
Provisions of the Telecommunications)	
Act of 1996)	

JOINT COMMENTS OF
PEOPLE FOR THE AMERICAN WAY AND MEDIA ACCESS PROJECT

People for the American Way (PFAW) and Media Access Project (MAP) (“Commenters”) hereby submit the following comments in response to the Commission’s *Order and Notice of Proposed Rulemaking*, CS Docket No. 96-85 (Released April 9, 1996) (*NOPR*). In paragraph 109 of the *NOPR*, the Commission seeks comment on how it can advance the goals enunciated in subsection 706(a) of the Telecommunications Act of 1996 (“Act”) - which requires the Commission to encourage, through various regulatory and market-driven means, the deployment of advanced telecommunications capability “to all Americans” - in the cable services context.

INTRODUCTION

The primary purpose of the Telecommunications Act of 1996 was to open up the various telecommunications industries to competition. As a result, the American public should soon be able to receive basic and advanced telecommunications services from a variety of providers. To that end, the cable industry is quickly positioning itself to be one of the primary players in the development of the National Information Infrastructure by providing advanced telecommunications services of the kind that have traditionally been

provided by the telephone companies. Most importantly, cable is evolving from a one way conduit for the dissemination of video programming into a two way pipeline for high speed data transfer over such networks as the Internet and commercial and local online services.

Cable offers the potential to provide vastly increased bandwidth to network users without great capital expense. Using a cable modem, a computer user can receive data at hundreds of times the rate achievable with an ordinary analog modem connected to a telephone line. For the immediately foreseeable future, therefore, cable will be able to provide the data transfer functions traditionally served by telephone companies, only at a much higher rate.

Such bandwidth will not only allow these information consumers to complete present day tasks faster, but it will also open the door to the creation of networked applications and information resources previously unworkable because of the limited speed at which users are connected to these networks. Access to a high-bandwidth means of data transfer, such as a cable modem, will increasingly be necessary to take full advantage of the resources that the National Information Infrastructure will have to offer. As time passes, more and more of this content will be designed for high-bandwidth connections, so users without such high-bandwidth technology will suffer more than the relative inconvenience of slower data transfer, they will be effectively shut out from using significant portions of the content available on the NII.

To best achieve the goals enunciated in section 706, the Commission must avoid *ad hoc* rulemaking. The Commenters therefore urge the Commission to adopt a clearly

defined regulatory framework for the deployment of advanced cable services at the outset, so that the cable industry will know its role in fulfilling the goals and principles detailed below.

THE COMMISSION MUST FOLLOW THE ACT'S UNIVERSAL SERVICE PRINCIPLES IN DECIDING HOW TO ENCOURAGE THE DEPLOYMENT OF ADVANCED CABLE SERVICES TO ALL AMERICANS

The intent of the Act as articulated in sections 254 and 706 could not be more clear - "advanced telecommunications and information services" should be made universally available, at affordable rates, to all Americans. Both sections of the Act require this broad access, and more importantly, do not specify that any one particular technology be subject to their mandate. Cable operators are already providing the capability for the rapid dissemination of voice, video and data, and will only increase this function in the future. Thus, the Commission must apply the universal service principles defined in the Act in implementing section 706 in the cable services context.

Because the universal service language of the Act and subsection 706(a) are so closely intertwined, these comments hereby incorporate and build on PFAW/MAP's comments previously filed with the Commission in response to its *Notice of Proposed Rulemaking and Order Establishing Joint Board*, FCC No. 96-93 (released March 8, 1996). Those comments are attached as Exhibit 1.

A. Access to Advanced Telecommunications Is Necessary for All Americans

Advanced telecommunications technologies are playing an increasingly crucial role in education, commerce, health care, and civic discourse. Computer networks such as the Internet, as well as other commercial and local online services, for example, will

provide information and other services that will be essential to the lives of all Americans.

Access to such capabilities will therefore soon be a necessity, not just a luxury.

Advanced services are likely to replace, not merely supplement, traditional modes of discourse. Thus, assuring all Americans access to these technologies is crucial to fulfilling the core goals of the First Amendment, which seek to promote a marketplace of ideas in which a wide variety of viewpoints are exchanged.

Because access to the advanced telecommunications services provided by cable operators is becoming necessary to many facets of everyday life and the fulfillment of First Amendment values, these services are becoming “essential to education, public health, or public safety.” 47 U.S.C. 254(c)(1)(A). It is therefore precisely the types of advanced telecommunications services now being provided by cable operators that Congress mandated be included in the definition of universal service. Thus, taking both subsection 706(a) and the universal service provisions together, the Commission must ensure that every American has affordable access to these advanced cable services.

Such universal access must include service in rural and disadvantaged areas. The Commission’s regulations should ensure that these areas and institutions will not be precluded from access to this advanced telecommunications capability. Indeed, it will often be these areas and institutions that need these capabilities the most, as they often allow access to resources and services that would otherwise be inaccessible or unaffordable. Section 104 of the 1996 Act makes explicitly clear that telecommunications services are to be provided to all people without discrimination on the basis of race, color, religion, national origin or sex. 47 U.S.C. 151. As the new

services provided by the rapidly developing National Information Infrastructure become ever more important to daily life, such nondiscriminatory deployment is essential to narrowing the chasm between the privileged and underprivileged.

B. The Commission Must Ensure Broad Institutional Access to Advanced Services Provided By Cable Operators

As the promise of high speed connections over cable networks becomes reality, the Commission must take steps to ensure that everyone will be able to access this technology and fully participate in all that the developing information infrastructure has to offer. Institutional access, especially for schools and libraries, is particularly important to reaching that goal. The plain language of 706(a) recognizes this fact by specifically noting the importance of providing access to schools. Again, the Commission must turn to the universal service language as well as 706(a) in deciding how best to meet this objective. Following the universal service principles, the Commission must ensure that schools have affordable access to the cable wiring and modems needed for high speed access to the Internet and other information resources. Such access will further spur the utilization of distance learning, which “levels the playing field” by providing students in rural and disadvantaged areas with access to resources and educators that were previously unavailable to them. Both Congress and the Executive Branch, through initiatives such as the Goals 2000 program, have put considerable focus on the need to connect institutional users, in particular schools and libraries, to advanced communications capabilities.

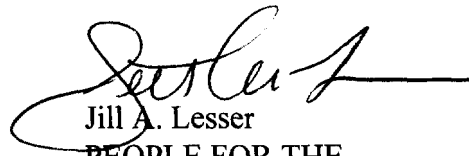
The universal service language in the Act requires telecommunications carriers to provide services to schools and libraries at a discount, and establishes a framework to

ensure that advanced telecommunications services are available to those institutions where technically feasible and economically reasonable. 47 U.S.C. 254(h)(1)(B). These universal service provisions provide concrete examples of the general principle of widespread deployment of advanced telecommunications capabilities that subsection 706(a) requires the FCC to encourage. Therefore, in implementing subsection 706(a) in the cable context, the Commission must look to the concrete principles and requirements of the universal service provisions in addition to the general language of 706(a), and ensure that institutional users will have affordable access to advanced cable services.

CONCLUSION

Access to the advanced telecommunications services provided by the cable industry will be essential to ensuring that all Americans will be able to fully and equally participate in society. In implementing subsection 706(a), therefore, the Commission must follow the universal service principles of the Act.

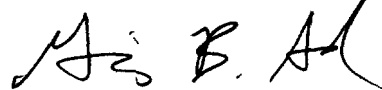
Respectfully Submitted,



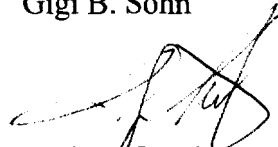
Jill A. Lesser

PEOPLE FOR THE
AMERICAN WAY
2000 M Street, NW
Washington, DC 20036

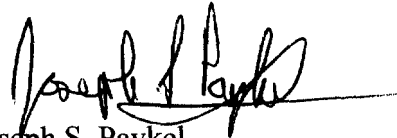
Counsel for Joint Commenters



Gigi B. Sohn



Andrew J. Schwartzman



Joseph S. Paykel
MEDIA ACCESS PROJECT
2000 M Street, NW
Washington, DC 20036

Law Clerk:
James A. Hermes

Counsel for Joint Commenters

Exhibit 1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Federal-State Joint Board on
Universal Service

)
)
)
)

CC Docket No. 96-45

JOINT COMMENTS OF
PEOPLE FOR THE AMERICAN WAY, ALLIANCE FOR COMMUNITY
MEDIA, ALLIANCE FOR COMMUNICATIONS DEMOCRACY, BENTON
FOUNDATION, CENTER FOR MEDIA EDUCATION, LEAGUE OF
UNITED LATIN AMERICAN CITIZENS, MINORITY MEDIA AND
TELECOMMUNICATIONS COUNCIL, NATIONAL COUNCIL OF LA RAZA,
and NATIONAL RAINBOW COALITION

Joseph S. Paykel
Andrew Jay Schwartzman
Gigi B. Sohn
MEDIA ACCESS PROJECT
2000 M Street, NW
Washington, DC 20036
202-232-4300

Law Student Intern:
Maria-Victoria Suarez
Washington College of Law
At American University

Jill A. Lesser
PEOPLE FOR THE
AMERICAN WAY
2000 M Street, NW
Washington, DC 20036
202-467-4999

Counsel for Joint Commenters

April 12, 1996

TABLE OF CONTENTS

SUMMARY	ii
PRELIMINARY STATEMENT	1
I. BASIC TELECOMMUNICATIONS SERVICES ARE ESSENTIAL TO ENSURE FULL CITIZEN PARTICIPATION IN SOCIETY.	2
II. THE NEW UNIVERSAL SERVICE PROVISIONS OF THE TELECOMMUNI- CATIONS ACT EXPAND UPON, BUT DO NOT REPLACE, THE COMMIS- SION'S UNIVERSAL SERVICE GOALS UNDER THE 1934 COMMUNICA- TIONS ACT.	5
III. THE COMMISSION SHOULD RECOGNIZE THE IMPORTANCE OF INSTI- TUTIONAL ACCESS TO ADVANCED SERVICES.	7
IV. THE COMMISSION SHOULD BROADLY CONSTRUE THE UNIVERSAL SERVICE PRINCIPLES OF SECTION 254(B) OF THE TELECOMMUNICA- TIONS ACT.	9
A. Quality Services At Just, Reasonable, And Affordable Rates.	9
B. Advanced Telecommunications And Information Services.	12
C. Low Income Consumers And Those In Rural, Insular, And High Cost Areas.	13
CONCLUSION	16

SUMMARY

The decisions to be made in this proceeding have profound implications for the next century. They will set the foundation for citizen participation in democratic processes, the economic marketplace, and social and cultural activities of the information age. In a technological environment in which these services are increasingly essential for information, education, emergency services, and commerce, as well as communications, it is no exaggeration to say that full, equal, and affordable access to a broad range of telecommunications services is a birthright of citizenship.

The Commission and Joint Board must adopt rules which employ the principle that new technologies have become instrumental in promoting First Amendment values. Even more importantly, they must expressly define these policies as guideposts for future actions under the universal service provisions of the 1996 Act.

Technological advances have created new applications, such as telemedicine, data and file transfer, news services, chat rooms, electronic classrooms, and virtual malls, which go far beyond ordinary telephone service. This new conception of telecommunications supplants and enhances traditional views of speech. Citizens without access are citizens without voices and ears - they are unable to engage in these fundamental new forms of speech and new means to participate in society.

Furthermore, for every additional individual who gains access to telecommunications services and advanced services, the benefits are felt not just by that individual, but by society as a whole. Employers, government agencies, public institutions, private businesses, educators, family and friends, and many others benefit from greater accessibility to connected individuals.

Moreover, Congress made plain that the universal service provisions of the 1996 Telecommunications Act do not replace traditional universal service principles. Indeed, every provision of the 1996 Act builds upon these principles to broaden the types of services included and recipients covered.

Congress has taken a momentous first step in expanding the notion of universal service beyond residences to recognize the capacity of institutions, such as schools, libraries, community computing centers, and community media centers, in bringing new services and technologies to all Americans. The Joint Board and the Commission should follow this initiative by adopting an expansive list of services and support mechanisms for schools and libraries, and confirming the important role that all institutions have to play. However, they must make clear that in no way should the institutional availability of a particular service become an excuse for not eventually providing that service to homes.

Finally, only by adopting policies which embrace and build upon the guiding principles enunciated in the 1996 Act can the Commission create a just, comprehensive telecommunications system that will serve *all* Americans well into the next century.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	

**JOINT COMMENTS OF
PEOPLE FOR THE AMERICAN WAY, ALLIANCE FOR COMMUNITY
MEDIA, ALLIANCE FOR COMMUNICATIONS DEMOCRACY, BENTON
FOUNDATION, CENTER FOR MEDIA EDUCATION, LEAGUE OF
UNITED LATIN AMERICAN CITIZENS, MINORITY MEDIA AND
TELECOMMUNICATIONS COUNCIL, NATIONAL COUNCIL OF LA RAZA,
and NATIONAL RAINBOW COALITION**

People for the American Way, Alliance for Community Media, Alliance for Communications Democracy, Benton Foundation, Center for Media Education, League of United Latin American Citizens, Minority Media and Telecommunications Council, National Council of La Raza, and National Rainbow Coalition ("Joint Commenters") respectfully submit these comments in response to the Commission's *Notice of Proposed Rulemaking and Order Establishing Joint Board*, FCC No. 96-93 (released March 8, 1996) ("*NOPR*").

PRELIMINARY STATEMENT

With the universal service language of the Telecommunications Act of 1996 ("1996 Act" or "Telecommunications Act"), Congress charted a new course for telecommunications in the 21st century. In following this mandate, the Joint Board and the Commission similarly must establish policies with an eye toward the horizon.

These joint comments address the broad implications of the decisions the Commission and Joint Board will make in this proceeding. These decisions are for the ages: they will set the foundation for citizen participation in democratic processes, the economic marketplace, and

social and cultural activities of the information age. In a technological environment where these services are increasingly essential for information, education, emergency services, and commerce, as well as communications, it is no exaggeration to say that full, equal, and affordable access to a broad range of telecommunications services is a birthright of citizenship.

The commenters therefore urge the Commission and Joint Board to employ these principles in implementing the rules under consideration in this proceeding, and to make plain that these principles should be central to all further consideration of additional rules under these sections of the act. The Commission and Joint Board should adopt policies that acknowledge that new technologies can become instrumental in promoting First Amendment values, and that increased access will benefit society as a whole, as well as the individuals who receive it. These policies embody Congress' mandate in the 1996 Act to build upon traditional universal service principles, not to replace them. Universal service policies should take a broad view of the role of institutions, such as schools, libraries, community computing centers, and community media centers, in bringing new services and technologies to all Americans. And finally they should agree that the guiding principles enunciated in the 1996 Act empower the Commission to create a just, comprehensive telecommunications system that will serve *all* Americans well into the 21st century.

I. BASIC TELECOMMUNICATIONS SERVICES ARE ESSENTIAL TO ENSURE FULL CITIZEN PARTICIPATION IN SOCIETY.

New technological advances - and those that are yet to come - will redefine telecommunications service and increase their importance to extend far beyond ordinary telephone service. These technologies bring new modes of exchanging opinions, information, news, and viewpoints; new tools for education and skill development; new methods for conducting research and

commercial activity; and new means of communicating with fellow citizens. This new conception of telecommunications services supplants and enhances traditional views of speech. Those without access to telecommunications services are disenfranchised - they are unable to engage in these fundamental new forms of speech and means to participate in society. Universal service is therefore essential to enabling every American to speak and to participate in society.

One of the most imposing challenges the Commission and Joint Board face is to implement new and advanced technologies to ensure that the competitive environment in which they can thrive will enrich the *marketplace of ideas* in the process. Technological convergence will transform what had heretofore been common carrier or data transmission services into new forms of media for political, civic, artistic, and commercial speech. As these new methods add to, and perhaps even replace, existing means of mass communications, the Commission and Joint Board must address First Amendment concerns not formerly confronted.

New forms of mass communication require new First Amendment applications, but the underlying goals remain the same. The Supreme Court has repeatedly ratified the First Amendment ideal that government should insure the "widest possible dissemination of information from diverse and antagonistic sources." *Associated Press v. United States*, 326 U.S. 1, 20 (1945). It has held that "the people as a whole retain their interest in free speech...and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. *Red Lion Broadcasting v. FCC*, 395 U.S. 367, 389 (1969) As radio moved from ship-to-shore Morse code to modern broadcasting, Congress enacted the 1927 Radio Act, under which the FCC implemented these First Amendment principles as to the new medium. Later - as coaxial cable became the basis of cable television - municipalities, Congress, and the FCC

fostered First Amendment principles through establishing leased access, PEG channels, program origination, must-carry, and other rules adapted to the new and different characteristics of the emerging medium.

This goal should not be an afterthought: it must be central to the new framework. The Commission and the Board should heed Professor Cass Sunstein's reminder that:

Sometimes constitutional doctrine seems to have lost sight of the point of central constitutional commitments. Sometimes the commitment to free speech seems like an abstraction insufficiently...connected with democratic goals, or indeed with any clearly describable set of governing aspirations.

Cass Sunstein, *Words, Conduct, Caste*, 60 U. Chi. L. Rev. 795, 797 (1993).

For every additional individual who gains access to telecommunications services and advanced services, the benefits are felt not just by that individual, but by society as a whole. Employers, government agencies, public institutions, private businesses, educators, nonprofit community outreach institutions, family and friends, and many others benefit from greater accessibility to connected individuals. When individuals use these services for education, research, and development of job skills, it benefits the economy and lessens the burden on government job training and welfare programs.¹ When they use these services to receive news and information, they become more empowered to make informed choices at the polls, contribute to civic discourse, and contribute to the American system of governance. When they use these services to access public safety and health care information and assistance, they can fight crime,

¹This is especially important in regards to children. Children without access are likely to fall further behind in education, be unable to compete in a highly competitive job market, and risk sinking into poverty. However, as the Commission is well aware, the number of children living in poverty with little or no access is growing at an alarming rate. See discussion below, page 14.

avert and receive treatment for injuries, and prevent calamity before it occurs. When they are listed in directories and have access to these services, they may be reached by church and community outreach, shelters, and aid institutions.

II. THE NEW UNIVERSAL SERVICE PROVISIONS OF THE TELECOMMUNICATIONS ACT EXPAND UPON, BUT DO NOT REPLACE, THE COMMISSION'S UNIVERSAL SERVICE GOALS UNDER THE 1934 COMMUNICATIONS ACT.

Taken as a whole, the 1996 Act expresses the Congressional will to increase access to communications technologies for all citizens. In light of the new kinds of services which can be possible with new, and even as-yet unimagined technologies, and in light of the convergence of mass media and non-mass media delivery technologies and delivery mechanisms, the 1996 Act's universal service provisions embody the idea that citizens have a need for, and entitlement to, a broader level of services. This goes well beyond plain old telephone service ("POTS") to an expanded level of services which the Senate Commerce Committee described as "a cornerstone of the Nation's communications system." S. Rep. No. 104-23, 104th Cong., 1st Sess., at 25 ("S. Rep.").²

The Commission has expressed ambiguity concerning the weight it will give to its past experiences in addressing universal service issues. *NOPR* at ¶12. It states that it will be guided by past experience "only to the extent that experience can assist [it] in interpreting and effectuating [its] new statutory mandate." *NOPR* at ¶12. Elsewhere, however, the Commission characterizes the principles of Section 254 as particularizing and supplementing its responsibility under

²Indeed, the current chairman of the Senate Commerce Committee, a key sponsor of the Act, has advocated "subordinating the drive for deregulation and, where necessary, even competition, to the extent that it jeopardizes the realization of universal telecommunications service." Sen. Larry Pressler and Kevin. V. Schieffer, *A Proposal for Universal Telecommunications Service*, 40 Fed. Comm. L.J. 351, 354 n.7 (1988).

the 1934 Communications Act. *NOPR* at 13.

The 1996 Act builds upon and expands the long standing principles of promoting telephone service for all Americans. However, to recognize the increased importance of universal service in the new technological environment, the Act makes some significant refinements in its instructions to the Commission. The Act maintains and broadens service obligations because its driving mechanism - substitution of competition for monopoly - can make this possible. And Congress has supplied the FCC with more specific direction than ever before in meeting its universal service goals and increasing the scope of coverage.³ Thus, the Act does not change the Commission's public interest mandate, but certifies the value of the Commission's traditional universal service goals as part of furthering the public interest.⁴ It is important therefore for the Commission to state expressly that precedent adopted over more than 60 years should be retained as a new floor from which the Commission can build.⁵

³Congress announced an intent to go far beyond the "current implicit authority" set forth in the 1934 Act. The 1996 Act announces "clear statutory requirements...intended to provide continued consistency between Federal and State actions to advance universal service, and for greater certainty and competitive neutrality among competing telecommunications providers...." S. Rep. at 25.

⁴Congress has clearly and explicitly tasked the Joint Board and the Commission with reviewing the existing universal service regulations and recommending improvements. 1996 Act, §254(a)(1); S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess., at 131 ("Conf. Rep.").

⁵Even in the earliest days of its existence, the Federal Radio Commission found that broadcast licensing decisions were to be made with an eye toward universal service. See, *Statement of August 23, 1928 Relative to the Public Interest, Convenience, or Necessity*, 2 FRC Ann. Rep. 166 (1928). More recently, the Commission has found that encouraging the availability of telephone services at reasonable rates fulfilled the 1934 Communications Act mandate found in the "available...to all" language of Section 151 and the expressed purpose of the act to "'promot[e] safety of life and property through the use of wire...communication...'" *MTS and WATS Market Structure*, 93 FCC 2d 241, 267 (1983). Additionally, the courts have long recognized universal service goals as "prominen[t]." *NARUC v. FCC*, 737 F.2d 1095, 1107 (D.C.Cir.

Finally, Congress' addition of non-discrimination language to Section 151 is further evidence that it desired to retain traditional universal service concepts.⁶ In this bold step, it made explicit what had only been implied before: that the very purpose of the Act had been to promote deployment of telecommunications services *to all*, irrespective of differences in race, religion, national origin, or sex.

III. THE COMMISSION SHOULD RECOGNIZE THE IMPORTANCE OF INSTITUTIONAL ACCESS TO ADVANCED SERVICES.

The 1996 Act contains the principle that "elementary and secondary schools and classrooms,...and libraries should have access to advanced telecommunications services...." §254-(b)(6). Moreover, it includes provisions which require all carriers, upon request, to provide at a discount (1) any services that are within the Commission's definition of universal services, §254(h)(1), and (2) additional special services which the Commission may designate. §254(c)(3). The Commission has asked what functionalities should be supported through universal service mechanisms for these institutions and how to structure and implement such mechanisms. *NOPR* at ¶¶77-88.

With these newly created guidelines, Congress has taken a momentous first step. This is the first instance in which the notion of universal service has been expanded beyond residences to encompass institutional access.

Joint Commenters welcome and applaud this development, and believe that expanding

1984). They have endorsed application of new technology in achieving the goals of universal service as far as "available and feasible." *US v. Western Electric Co.*, 531 F.Supp. 894, 904 (D.N.J. 1981).

⁶The 1996 Act prohibits "discrimination on the basis of race, color, religion, national origin, or sex." §104.

institutional access presents great possibilities. The Joint Board and the Commission should not only adopt expansive definitions of services and support mechanisms in applying these new guidelines to schools and libraries, but it should recognize the role of all institutions - schools, libraries, community computing centers, and community media centers - in bringing new services and technologies to all Americans. However, Joint Commenters stress that the Commission must make a clear declaration that in no way should the institutional availability of a particular service become an excuse for not providing that service to homes. Moreover, the Commission should state that it will not refrain from adding a service to its universal service definition just because it has traditionally been available in institutions.⁷

Institutional access to advanced telecommunications services will produce several benefits:

- Institutions will serve as a gateway to allow individuals far greater access to these services than they would otherwise receive. At community computing centers and community media centers,⁸ in classrooms, and at library terminals, tens or even hundreds of users may gain access to advanced networks for each single connection. For example, computing stations in libraries may offer patrons who could not even afford personal computers their first chance - at little or no cost - to access the world wide web.
- Institutional access is an efficient use of scarce universal service resources -

⁷This is especially important for services used by America's children. Children who can only access advanced telecommunications services at school could be at a serious disadvantage when compared with those who have access in their homes, where a young child spends most of his or her day. Moreover, functions such as e-mail, teaching aids, and educational games will involve parents in their child's education and can extend and reinforce classwork.

⁸Community media centers, also known as community communications centers, are modeled along the lines of public, educational and government access centers on cable television. See James N. Horwood, *Public, Educational, and Governmental Access on Cable Television: A Model to Assure Reasonable Access to the Information Superhighway for All People in Fulfillment of the First Amendment Guarantee of Free Speech*, 25 Seton Hall L. Rev. 1413 (1995). Such centers not only provide access to communications systems, but also make available to the public facilities, equipment, and training.

mechanisms to promote access for every citizen are less manageable and affordable than promoting access to a discrete number of institutions. This is especially beneficial in encouraging early availability of new technological developments.

- Institutional access is a highly efficient use of telecommunications resources, because one connection may be active throughout the day instead of the few hours that each individual user may desire access.
- Institutions are ideally situated to provide fundamentals training, skills building, information exchanges, and technical support. They could even function as access providers for community networks, and act as a conduit to post community or employment information to advanced networks.
- Institutions may be useful as centers to incubate new technologies. They will enable providers of new advanced services to reach a large number of potential users with a single connection, and will be able to educate their patrons in the use of these technologies.

Therefore, the Joint Commenters urge the Commission and Joint Board to promote institutional access to what can be identified as the next generation of telecommunications services, *i.e.* those services which are likely to become widely available. This will bring about all the benefits mentioned above, and will reduce the risk of selecting technologies which may become obsolete. Moreover, this is an evolving level of services; the Commission can and should periodically revisit its determination of which technologies to include. 1996 Act, §254(c)(2).

IV. THE COMMISSION SHOULD BROADLY CONSTRUE THE UNIVERSAL SERVICE PRINCIPLES OF SECTION 254(B) OF THE TELECOMMUNICATIONS ACT.

Congress enumerated several "universal service principles" in Section 254 of the 1996 Act, upon which the Commission and the Joint Board "shall base policies for the preservation and advancement of universal service...." §254(b). These are floors upon which to build. To fulfill Congress' mandate to "advance[]" universal service, indeed if these principles are to have any real significance, the Commission and the Joint Board must interpret them expansively.

A. Quality Services At Just, Reasonable, And Affordable Rates.

Congress has directed the Commission and the Joint Board to address several principles in formulating the universal service policies. These include, *inter alia*, the directive that "[q]uality services should be available at just, reasonable, and affordable rates." 1996 Act, §254(b)(1). The coalition believes this is perhaps the most important, overarching goal expressed in the section.

In its narrowest, technical sense, the term "quality" signals that the services a carrier provides to underserved populations under these universal service programs should not be inferior, in terms of signal strength, clarity, reliability, or other technical features, to services it offers to other customers. Presumably, at least for some services, carriers would desire to control their costs by reducing this quality, a result the Act explicitly forbids.

But given Congress' intent to foster broad citizen participation and access, see discussion above, page 2, "quality services" must also encompass *quality of service*, including the content as well as the technological characteristics of the service. For example, rural areas often at present do not receive quality service sufficient to enable them to use high speed modems. This affects the content of what they can receive, and may permit text, but not graphical, interconnections to online services and the Internet. The Commission must enable citizens to afford and receive a package of services which fully enables them to participate in society. See discussion above, page 2.

The services the Commission has proposed, *NOPR* at ¶¶18-22, while a good start, are insufficient in several respects. First, the Joint Commenters concur with the Consumer Federation of America and the American Association of Retired Persons that the definition of universal

service should include the right to *use* the public network, and thus should encompass flat rate service. Comments of CFA and AARP, at 9 ("CFA/AARP Comments"). Second, the Commission has omitted other services which are purchased by the majority of subscribers and are a public convenience and necessity, including directory assistance and listings, modern network facilities, internet access availability, call trace, and 900-number blocking service. *See NOPR* at ¶23. "Quality service" must rightly include these functionalities which have become so commonplace.⁹

The term "affordable" refers to the entire range of services encompassed within the Commission's universal service goals. Not only should every service contained within the universal service definition be affordable individually, but the entire package, taken a whole, must be affordable. Initiation fees, connection charges, and monthly service rates must be affordable.

Affordability is a concept which must be income-sensitive and flexible. The Commission should adopt a definition which uses a fixed or progressively increasing percentage of disposable income. This has the advantage of being equitable: citizens with the very lowest income levels are least able to afford telecommunications services. Similarly, some citizens in rural and high-cost areas may not be able to bear much of their higher costs-of-service.

Joint Commenters endorse AARP and CFA in opposing any definition that is based on subscribership levels. CFA/AARP Comments at 6; *See generally NOPR* at ¶4 n. 13. As discussed below, at page 13, telecommunications service is a necessity of life for many individuals, and some households are forced to reduce their consumption of other necessities of life to

⁹On this point, Joint Commenters concur in the comments of AARP and CFA. CFA/AARP Comments at 9-10.